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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/547,945	04/12/2000	Bcatty Graydon	1930	5616

21834 7590 12/11/2006

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MINNEAPOLIS, MN 55416

EXAMINER
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SMITH, RUTH S

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/547,945		GRAYDON ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Ruth S. Smith		3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4 and 5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1,2,5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wittkamp in view of Crowley US 5,588,432. Wittkamp discloses a catheter having a sensing electrode and means for providing RF energy to ablate tissue within the heart. Wittkamp discloses means coupled to the electrode for delivering and/or receiving a current pulse. The current pulse is coupled to a separate electric potential external to the heart, such as reference electrode R. Wittkamp using the current pulse to provide an indication of the location of the catheter and creates an image of the location within the heart. Wittkamp fails to disclose the use of a plurality of therapy electrodes at the distal end of the catheter to deliver the Rf energy, a drug delivery lumen or an angioplasty balloon. Crowley discloses a therapy catheter with a sensing electrode, a therapy electrode mounted at the distal end (Fig. 1A, 15A); a drug-delivery lumen (Fig. 7 A-D, column 17, lines 43-65); inflatable balloon at the distal end (Figs. 19a-19c). It would have been obvious to someone of ordinary skill in the art at the time of the invention to provide the therapy catheter of Wittkamp with treatment means as taught by Crowley. Such a modification merely involves the substitution of one known type of treatment means on a catheter for another.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wittkamp in view of Walinsky et al. Wittkamp discloses a catheter having a sensing electrode and means for providing RF energy to ablate tissue within the heart. Wittkamp discloses means coupled to the electrode for delivering and/or receiving a current pulse. The current pulse is coupled to a separate electric potential external to the heart, such as reference electrode R. Wittkamp using the current pulse to provide an indication of the location of the catheter and creates an image of the location within the heart. Wittkamp fails to disclose the use of a microwave waveguide for delivering microwave energy to the ablation site. Walinsky et al. disclose a catheter for microwave ablation; a coaxial waveguide; an antenna at the distal end for locating and guiding the catheter. It would have been obvious to someone of ordinary skill in the art at the time of the invention to provide the therapy catheter of Wittkamp with treatment means as taught Walinsky et al. Such a modification merely involves the substitution of one known type of treatment means on a catheter for another.

### ***Response to Arguments***

Applicant's arguments filed November 30, 2006 have been fully considered but they are not persuasive. Applicant's arguments regarding Crowley are not understood in that the reference was used not as a teaching of imaging to locate a catheter but as a teaching of providing a therapy catheter with a sensing electrode, a therapy electrode mounted at the distal end (Fig. 1A, 15A); a drug-delivery lumen (Fig. 7 A-D, column 17, lines 43-65); inflatable balloon at the distal end (Figs. 19a-19c). Therefore, the type of imaging used to determine catheter location disclosed by Crowley is irrelevant in determining whether it would have been obvious to have modified Wittkamp to include the treatment means taught by Crowley. Applicant's arguments regarding Walinsky are not understood in that the reference was used not as a teaching of means used to locate a catheter but as a teaching of providing a catheter for microwave ablation; a coaxial waveguide; an antenna at the distal end for locating and guiding the catheter.

**Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth S. Smith whose telephone number is 571-272-4745. The examiner can normally be reached on M-F 7:30 AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ruth S. Smith  
Primary Examiner  
Art Unit 3737